89-1291 (1)

Supreme Court, U.S.
FILED
FEB 8 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1989

ATTA MOSHKELGOSHA, ET AL.

Petitioners,

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

Atta Moshkelgosha
Pro se
9239 Greenwood Lane
Lanham, Maryland
20706

18pp

QUESTIONS PRESENTED

Whether State Agency and Courts of the State of Maryland denied petitioners due process of law and equal protection in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States when they failed to apply their zoning ordinance, their Master Plan, and case law in denying petitioners application from open space zoning to commercial.

Whether the State Agency and Courts of the State of Maryland denied petitioners due process of law and equal protection when a State Rule required the State Agency to make a stenographic "record of its proceedings" and provide a copy to the Circuit Court of Prince George's County in an appellate review, and the Agency failed to file petitioners' oral argument made before the State Agency.

Whether the State's interest in acquiring petitioners' property after filing their application and during appellate review in the Courts violated petitioners due process rights.

Whether the manifest interest of petitioners' attorney in acquirng some of petitioners property violated petitioners due process rights.

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OPINIONS BELOW

The October 10, 1989, Order of the Maryland Court of Appeals denying Petitioners petition for writ of certiorari is located in the Appendix at p. 1. The May 10, 1989, unreported decision of the Maryland Court of Special Appeals is located at p. 3 The May 18, 1988, unreported decision of the Circuit Court of Prince George's County is located at p 25.

The District Council's March 10, 1987, Order of denial is located at p. 34.

JURISDICTIONAL STATEMENT

Jurisdiction of the Supreme Court rests in 28 U.S.C. §1257(a). On October 10, 1989, the Maryland Court of Appeals denied Petitioners Petition and Supplemental Petition for Writ of Certiorari On May 10, 1989, the Maryland Court of Special Appeals affirmed a decision of the Circuit Court of Prince George's County, affirmed the decision of the district Council, denying Petitioner's application to rezone their property from open space to commercial. On March 10, 1987, the District Council adopted findings of the Zoning Hearing Examiner and denied Petitioners' application for rezoning from open space to commercial.

This petition is filed within ninety days of the Order of the Maryland Court of Appeals denying Petitioners' petition for writ of certiorari.

CONSTITUTION, STATUTES AND RULES INVOLVED

Fifth Amendment of the United States Constitution.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment of the United States Constitution, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Sates and of the State wherein they reside. No State shall make or enforce any law which shall abridg the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

proprety without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Maryland Statute, Rules & Ordinance

Maryland Code Ann. Art. 28, §8-106(f), provides, in pertinent part:

(f) Procedure for appeal. - Within 30 days of service of a petition or within whatever further time the court may allow, the district council shall transmit to the reviewing court the original or a certified copy of the entire record of proceeding under review ...

Maryland Rule B7a provides, in pertinent part:

Promptly after receipt of a copy of the first petition filed in a case pursuant to Section e of Rule B2 (How Appeal Taken) and in any event within thirty days after receipt, unless a different time shall be fixed by order entered pursuant to Section b of this Rule, the agency shall transmit to the clerk of the court the original or certified copy of the record of its proceedings, including any transcript of testimony and any exhibit filed therein ...

Zoning Ordinance, Sec. 27-222

(a) Sectional Map Amendments shall be in conformance with theprinciples of orderly, comprehensive land use planning and staged development, and shall be based on the General Plan or Master plan.

STATEMENT OF THE CASE

The record below presents several federal constitutional issues in this petition for writ of certiorari: (a) the State of Maryland's denial of petitioners' application for commercial zoning; (b) the State's failure to provide the total "transcript of record" for appeal, required by law; (c) the effect of the State's manifest interest in acquiring petitioners' property; and (d) petitioners' counsel's interest in their property.

Petitioners are the owners of 42.4 acres of land located in the Southeast Quadrant of the intersection of U.S Route 301 and Maryland Route 4, Upper Marlboro, Maryland. The parcel, prior to rezoning, had been commercial since 1951. It was last known as the Marlboro Raceway.

In July 1973, the legislative County Council of Prince Georges' County approved the Master Plan for Subregion VI. Map 1 of the Plan, as enlarged by Map 5 placed Petitioners' land within the grey shaded "Employment Area." Map 2 showed Petitioners entire property within the red existing "Commercial" Area. Map 3 placed Petitioners' parcel in the light green area, outside the permanent low density areas.

In February 1977, another legislative enactment, the Sectional Map Amendment (SMA) for the Upper Marlboro and Lower Patuxent Area, promulgated a comprehensive revision of zoning maps, including inter alia, for Upper Marlboro. The SMA sought to implement the Subregion VI Master Plan of 1973. In doing so, it made several proclamations which affect

Petitioners' property, and which were not employed by the State agencies and Courts of Maryland:

1. It provided that land "identified on the Master Plan as being employment area should be rezoned to appropriate industrial and service commercial zones ..." (SMA App. 12,27); It also proposed "that 55.96 acres of land located at the Intersection of Rt. 301-4 be rezoned, to commercial classification." (SMA, p. 96)

3. It noted that the "Upper Marlboro Employment Area consists of over 677 acres of land ... "and proposed to increase the Employment Area in the vicinity of Route 301.

4. Significantly, the SMA noted that "the Master Plan identifies the four quadrants of the Routes 4 and 301 intersection as being an excellent location for quality industrial development." (SMA, 80).

5. The SMA noted that proposed commercial tracts in the vicinity of Routes 4 and 301 were not only "considered part of the future development area," but they were also part of the 301 corridor where additional "commercial zoning" is good policy.

6. The SMA specified that the "southeast quadrant of the intersection of Routes 4 and 301 includes over 57 acres of land and is recommended to be industrial. (SMA 96)

7. The SMA favored commercial acres [along the highway] in relatively large areas with narrow frontage to limit the number of highway access points." (SMA 96)

8. The SMA not only proposed that "55.96 acres of land located at the intersection of Routes 301 and 4 be rezoned to commercial classifications, to increase but calculated mathematical, that such additional land has the effect

of the inventory of commercial zoning, within, the [301] corridor, from 100.85 acres to 114.42. (SMA 96)

9. Further making a mathematical calculation while showing its intent to increase commercial zoning at the U.S. Route 301 and Maryland Rt. 4 intersection, the SMA observed 19 acres were already commercially developed, and recommended 16% of the proposed zoning that 50.9 acres of existing commercial zoning remain (SMA 96).

10. The SMA drew a chart which requires petitioners' parcel of 42.4 acres in order to reach the total of 677 acres, proposed to be zoned as commercial.

Impact on the Zoning Inventory (Master Plan Employment Area) (SMA p. 83)

Zone	Existing Area	Proposed Area	Net Change
R-A	-0- acres	292.9 acres	+ 292.9
R-R	487.8	-0-	- 487.8
C-2	24.46	-0-	- 24.46
C-S-C	-0-	8.87	+ 8.87
C-M	-0-	77.07	+ 77.07
I-1	139.43	87.08	- 52.35
I-2	25.76	41.13	+ 15.37
I-3	-0-	170.40	+ 170.40
	677.45	677.45	-0-

It is significant that on July 12, 1977, the District Council adopted the SMA proposal with certain amendments that did not alter the provisions alluded to infra. Specifically, the Council affirmed those SMA proposals which pertain to Petitioners' property, as set forth supra. The Council declared, inter alia:

> the District council recognizes that the intersection of MD 4 and U.S. 301 offers an unusual opportunity for Prince George's County to capture a portion of the regional and transient market for retail sales and services, and therefore proposes to enlarge the potential commercial area on the southeast quadrant; and ...

This is the same Southeast quadrant that includes the property of Petitioners.

At the time Petitioners' filed their application on February 11, 1986, the Zoning Ordinance provided, Section 27-222(a);

"Sectional Map Amendment shall be in conformance with the principles of orderly comprehensive Land use planning and staged development and shall be based on the general plan or Master Plan".

The Ordinance is still in force and effect.

In July 1985, Petitioners were recipients of a construction permit from the Department of Natural Resources, Water Resources Administration of the State of Maryland permitting them to effect a construction on part of their property under certain conditions. The Zoning Hearing Examiner was aware that the parties agreed that the Petitioners' property appeared to be zoned commercial on "Existing Situation Map," Map 2 of the

Master Plan. He was also aware that the SMA provided that property in the "Employment Area" will be zoned as industrial and service commercial. Notwithstanding these facts, the Zoning Hearing Examiner zoned Petitioners' property as open space. Another State Agency the District Council adopted the error of the Zoning Hearing Examiner, and in addition asserted the following findings:

"1. The District Council finds that several technical errors were made both in the contents of the text and in the maps accompanying the Subregion VI Master Plan (1973) and the Upper Marlboro and Lower Pautuxent Sectional Map Amendment (1977).

"2. The District Council concludes that despite these technical errors in the adoption process of the Master Plan and the Sectional Map Amendment, that the

Sectional Map Amendment clearly excludes the subject property form the Upper Marlboro Employment Area.

"3. The District Council additionally concludes that the Sectional Map Amendment recommends that the subject property be retained in the permanent low-density, rural living area as identified in the Master Plan."

The Zoning Hearing Examiner concluded that not only were there errors in the SMA but that there were also errors in the Master Plan. Each of the State Agencies and the Courts of Maryland ignored Zoning Ordinance Section 27-222(a) which required the Section Map Amendments inter alia to be based on the Master Plan, rather than "technical errors" of the SMA.

Similarly, the State Agencies and the Courts were aware that the Upper Marlboro Employment Area consisted of 677 acres

and that such a total could be reached only when Petitioners' 42.4 acre parcel was included with some six other parcels.

The record further reflects that the District Council made a finding of mistake based substantially on floodplain for a parcel of real property directly across the highway, 301 at 4, from Petitioners parcel. Petitioners' application sought rezoning upon the grounds of mistake and substantial change in the "neighborhood".

This property was zoned commercial; it was directly within the "neighborhood." North of Petitioners' property is a car dealership which is also within the "neighborhood" of Petitioners property. The record further reflects the District Council failed to deliver to the Circuit Court the total copy of the "transcript of record." The Council omitted

Petitioners' argument upon his application for rezoning, in violation of Rule B7 and Article 28.

It is undisputed that following Petitioners' notice of appeal the District Council failed to deliver to the Circuit Court the "transcript of record" as required by State and Rules of Maryland. The Maryland Court of Special Appeals construed the controlling Rules and Statute and concluded Petitioners were not denied due process of law. Petitioners' appeal to the Circuit Court of Prince George's County, and to the Maryland Court of Special Appeals were without benefit of Petitioners' oral argument, both Courts were aware of findings by the Zoning Hearing Examiner and the District Council that mistakes and technical errors alleged existed in the Master Plan, maps and Sectional Map Amendment provision, among themselves and

between each other. Both Courts rendered their decisions on alleged mistakes and technical errors without consultng Petitioners' oral contentions.

After Petitioners' filing of their petition for rezoning from open space to commercial, the State, on December 26, 1986, advised Petitioners it was interested in purchasing some or all of their property. The State was mindful of the 1973 Master Plan and the 1977 pronouncements of the Sectional Map Amendment. After Petitioners' refused to sell their property to the State, on May 16, 1988, the State filed a Petition For Condemnation, indicating its desire to obtain Petitioners land before it would be zoned commercial, and before its value would be increased.

Neither Court, although requested afforded relief from these unusual circumstances. Neither court found error in the proceedings below.

On August 4, 1987, one of Petitioners' attorneys forwarded a letter to Petitioners, seeking a new fee agreement, asking for 33 1/3 contingency if the Petitioner's property was sold or rezoned as commercial. Counsel for Petitioners had represented them for several months; He knew of Petitioners desire for commercial zoning; he filed pleadings and had become familiar with Petitioners entire record. He no doubt had some opinion about Petitioners' likely-hood of success on their zoning appliation.

Federal Question Raised in The Record

In the exceptions to recommendations of the Zoning Hearing Examiner, p. 16, where Petitio claimed of "unequal treatment." (1986) (R. p. In the Maryland Court of Appeals by the Suppl mental memorandum to petition for Writ of certiorari ignored by the Court (1989)

ARGUMENTS IN FAVOR OF GRANTING WRIT

According to the Zoning law of the State of Maryland, the 1973 Master Plan of Subregion VI can not admit of mistake or error. Any alleged existing errors or "mistake" must be resolved in favor of the Master Plan, not the 1977 Sectional Map Amendments. Prince George's County Zoning Ordinance Section 27-222(a).

Hence, the State Agency, the Zoning Hearing Examiner acted arbitrarily and capriciously when he denied petitioners' application for commercial zoning, and relegated petitioners' 22 acres to the permanent low density area and open space. As set forth in the Statement of the Case, Maps 2,3, and 5 of the Master Plan patently place petitioners property within the commercial parcel in the southeast quadrant of US 301 and Md.4 intersection.

Moreover, the Zoning Hearing Examiner was aware of property in the same neighborhood at US 301 and Route 4 to which the state had granted commercial zoning, directly across the highway from petitioners' property in 1984. Thus, the Hearing Eaminer denied Petitioners' their rights under the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Circuit Court of Prince George's County, Maryland, the Court of Special Appeals, and the Maryland Court of Appeals all denied Petitioners their constitutional rights when they affirmed the Zoning Hearing Examiner and the County Council. The State Agencies and the Courts of the State of Maryland failed to follow the State's law enunciated in Pattey v. Board of County Commissioners 271 Md. 352 ____ A.2d ____

(1974). In Pattey, where there existed alleged mistakes between a master plan and a zoning map, the trial judge found that a "mistake" had been made.The Court of Appeals corrected the error of the trial court, and noted the status of a master plan thusly, Pattey, Id., 360-361

> Thus, the trial judge fell into error by ignoring the basic distinction between a master plan, on the one hand, and a zoning map, comprehensive zoning, or zoning classification, on the other. . . It is a "mistake" in the latter, not in the master plan, which may support a rezoning.

Hence, the inclusion of petitioners property in the maps of the Master Plan are absolute; they cannot admit of "mistake." In ruling otherwise, the, State Agencies and Courts of Maryland committed gross error; they failed to accord petitioners equality of their laws enunciated in the Master Plan, the Zoning Ordinance, Section 27-222(a) and Pattey

v. Board of County Commissioner, supra, and the United States Constituton as well. It is significant to note the State of Maryland's personal interest in petitioners' property:

1. In 1985, before Petitioners filed their 1986 application for rezoning to commercial, the State sought to purchase Petitioners property.

2. In 1988, while appeal from the state Agency was pending before the Circuit Court of Prince George's County the State filed condemnation proceedings. There can be no question that "just compensation" for petitioners' property is much less if commercial zoning is denied petitioners. The Courts of Maryland denied petitioners Motion for Reconsideration filed after the State filled notice of condemnation proceedings of their property. This two denied petitioners of their due process rights

and just compensation rights guaranteed by the Fifth Amendment to the Constitution.

Maryland Rule B7 provides in pertinent part " ... the agency shall transmit to the Clerk of Court the original or certified copy of the record of its proceedings, including any transcript of testimony and any exhibit filed therein..." Similarly, Article 28 Section (a) and (b) require "a stenographic record" of all hearings and that it be transmitted to the reviewing court in petitions of zoning map amendments. Although petitioners had a hearing for the purpose of a zoning map amendment, the District Council failed to transmit the "original" record of its proceedings to the Circuit court. It omitted Petitioners' oral argument.

The Maryland Court of Special Appeals, interpretation of the aforementioned eliminated petitioners' oral argument from "record of its proceedings," and found the State Agency had committed no error. This interpretation raises substantial constitutional questions under the due process clause of the Fourteenth Amendment and Article 24 of the Declaration of Rights of the Maryland Constitution.

Interpretation of Article 24 of the Declaration of Rights of the Maryland Constitution is derived from the Supreme Court's Fourteenth Amendment decision. Home Utilities Company, Inc. v. Revere Cooper and Brass Co., Inc., 209 Md. 610 (1955), ____ A.2d _____ (1955). Since denial of petitioners' application for rezoning is a de minimis impairment of their property interest, they are entitled to procedural due process

protections Board of Regents v. Roth 408 U.S. 564 (1972). This is so, even though the denial of their due process rights has occurred by judicial interpretation by the Maryland Court of Special Appeals rather than a legislative body. Brinkerhoff-Farris Trust and Savings Company v. Hill, 281 U.S. 673 (1930). The confidential relationship between attorney and client is jeopardized when counsel seeks to take advantage of his client by acquiring an interest in his property.

The statement of the case reflects how the State and Counsel sought to acquire Petitioners' property. Either strain on Petitioners' would seem to jeopardize their due process and equal protection right both together aggravates the matter.

CONCLUSION

In view of the foregoing, and the record in toto, it is respectfully submitted that Petitioners' Petition for Writ of Certiorari be granted.

Respectfully submitted,

Atta Moshkelgosha

Atta Moshkelgosha
Pro se
9239 Greenwood Lane
Lanham, Maryland 20706

CERTIFICATE OF SERVICE

I hereby certify that 3 copies of the Petition for Writ of Certiorari was mailed postage prepaid this 12th day of February, 1990 to: Joyce Birkel Hope, Esq., County Administration Building, Upper Marlboro, MD 20772.

Atta Moshkelgosha

Atta Moshkelgosha

APPENDIX

APPENDIX

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ATTA MOSHKELGOSHA, et al.	IN THE
	COURT OF APPEALS
	OF
v.	MARYLAND
	Petition Docket
	No. 240
PRINCE GEORGE'S COUNTY,	September Term,
MARYLAND	1989
	(No. 1185,
	September Term,
	1988

Filed: October 10, 1988

O R D E R

Upon consideration of the petition for a writ of certiorari and supplement to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplement be and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy

Chief Judge

Date: October 10, 1989

UNREPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND
NO. 1185

September Term, 1988

ATTA MOSHKELGOSHA, ET AL.

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Moylan
Bloom
Bell, Robert M.

JJ.

PER CURIAM

Filed: May 10, 1989

Atta Moshkelgosha and Mortaza Sholough, appellants, timely filed an appeal from the judgment of the Circuit Court for Prince George's County. That court affirmed the decision of the County Council for Prince George's County, sitting as the "District Council", to deny their application for rezoning. Their appeal presents five questions:

1. Did the District Council, by its own findings and conclusions and by its adoption of the Zoning Examiner's recommendations, err in not granting the requested rezoning?

2. Does the District Council's failure to record and maintain a transcript of the oral argument in an application for rezoning mandate that the council's opposition to appellants' appeal be dismissed?

3. Was limiting all argument to one hour an abuse of discretion?

4. Should the Circuit Court have allowed counsel to use summary exhibits to aid in oral presentation, particularly in light of the unexpected time constraints?

5. In light of the filing of condemnation proceedings against appellants' property almost simultaneously with the Court's decision below, should the court have reconsidered its ruling?

We discern no error and, so, affirm.

1

Appellants are the owners of a 42.4 acre parcel of land, formerly the Marlboro Raceway, located on the east side of U.S. Route 301, southeast of its intersection with Maryland Route 4. At the time of its purchase in 1981, as well as in 1973, when the Sub-Region VI Area Master Plan ("Master Plan") was adopted, and in 1977, when the Upper Marlboro and Lower Patuxent Area was comprehensively rezoned and the Sectional Map Amendment

("SMA") adopted, the entire parcel was within the floodplain of Wester Branch Stream. Having determined that a portion of that parcel could be reclaimed from the floodplain as developable property, appellants filed an application in 1986 for rezoning of 22 acres of the parcel from the O-S (Open Space) zone, into which it had been placed in 1977, to the C-S-C- (Commercial shopping Center) zone.

Appellants' application was premised upon the alternative grounds of mistake and substantial change in the neighborhood. Because the former contention is rather involved, it is necessary that we set it out with greater particularity.

Notwithstanding that the Master Plan identified the subject property in the floodplain of Western Branch Stream and specified that such areas are unsuitable for development, appellants maintains

that the Master Plan also showed the subject property to be in the Upper Marlboro Employment Area.[1/] That there was a mistake was made manifest, in appellants' view,by the fact that the Upper Marlboro Employment Area, as described in the SMA text, consists of 677 acres; however, the listing of the properties comprising it accounts for only 597.75 acres. Appellants maintain that inclusion of their 42 acre parcel plus six others supplies the difference.

Appellants also maintain that their property was mistakenly zoned open space "because the 22 acres that are the subject of the application could be

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[1/] The lower court observed that the parties agreed that the property appeared to be zoned commercial on the Existing Situation Map, map 2 of the Master Plan. That being so and since the SMA provides that property in the employment area will be zoned industrial or service commercial, appellants maintain that when the District Council, in adopting the SMA, zoned the subject property open space, it was a mistake.

reclaimed through filling, filling being a situation that the Council failed to take into consideration." Moreover, they point out that other properties in the floodplain were zoned for "employment area" uses.

Although conceding that there were errors in both the Master Plan and the SMA, the Zoning Hearing Examiner found them to be immaterial to the zoning of appellants' property.[2/] In support of his conclusion, the hearing examiner noted that neither the text of the Master Plan, nor the text of the SMA, placed the subject property within the Upper Marlboro Employment Area. Indeed, the Master Plan, he found, was quite specific in excluding the property from that area. Even more emphatically, he noted that the

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[2/] The errors referred to were inconsistencies between the documents supporting the Master Plan and the SMA as well as between the text of the Master Plan and the SMA and those documents.

SMA specifically recommended that appellants' property be zoned O-S, open space, and the District Council, rather than specifying the property as apart of the Upper Marlboro Employment Area, adopted that recommendation. With regard to the discrepancy between the total acreage planned for the employment area and that listed in the SMA, the hearing examiner arrived at a different explanation than that offered by appellants. He determined that the error lay in the accounting for the total acreage in various zones, i.e., in the I-1 and I-2, and the R-R zones. The District Council agreed and adopted the findings and conclusions of the Zoning Hearing Examiner. In addition, however, it made the following findings:

1. The District Council finds that several technical errors were made both in the contents of the text and in the

maps accompanying the Subregion VI Master Plan (1973) and the Upper Marlboro and Lower Patuxent Sectional Map Amendment (1977).

2. The District Council concludes that despite these technical errors in the adoption process of the Master Plan and the Sectional Map Amendment, that the Sectional Map Amendment clearly excludes the subject property form the Upper Marlboro Employment Area.

3. The District Council additionally concludes that the Sectional Map Amendment recommends that the subject property be retained in the permanent low-density, rural living area as identified in the Master Plan.

Appellants fared no better before the circuit court. That court found that there was substantial evidence in the

record to support the District Council's rejection of each of appellants' arguments.

Notwithstanding appellants' characterization of the issue to be determined as one of law, it is obvious that it is not. At issue here is the correctness of the District Council's denial of appellants' rezoning application. That involves review either of a question of fact or, at best, a mixed question of law and fact, either of which is governed by the "substantial evidence" rule. See Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 338 (1986); Harford County v. McDonough, 74 Md. App. 119, 122 (1988). That the issue underlying the District Council's decision involves determining the intent, insofar as appellants' property is concerned, of the Master Plan and the SMA, does not mandate

a different result. That question must also be approached from the standpoint of whether the decision was clearly erroneous, that is, whether there is in the record substantial evidence to support it. See Admiral Builders v. South River Landing, 66 Md. App. 124, 128 -29 (1986) (Determination of the meaning of a writing, though a question of law for the court, is subject to the clearly erroneous standard on appeal.) This is especially so when, as here, the meaning of the Master Plan and the SMA has been determined by the District Council, the agency with expertise in the area.

There can be little doubt that there is substantial evidence in the record supporting the District Council's decision. There is evidence, to be sure, suggesting that appellants' property may have been intended to be included in the Upper Marlboro Employment Area. The

existing Situations Map accompanying the Master Plan, is such evidence but there is also some, if not more, evidence that it was not. That is the very essence of the substantial evidence rule. Bear in mind that "it is not the function of the reviewing court to zone or rezone, or to substitute its judgment for that of the zoning authority if the action of the zoning authority is based on substantial evidence and the issue is thus fairly debatable". Northampton v. Pr. George's Co., 273 Md. 93, 101 (1974); Montgomery Co. v. Gr. Colesville Ass'n, 70 Md. App. 374, 382 (1987). As the Court of Appeals observed in Eger v. Stone, 253 Md. 533, 542 (1969):

> . . . if the issue before an administrative body is fairly debatable", that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute

> their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without the payment of just compensation ....
>
> This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on evidence. (Citations omitted)

This is especially the case, where the zoning authority "is presumed to possess the expertise necessary for deciding the matters brought before it". Brouillet v. Eudowood Plaza, 249 Md. 606, 608 (1968).

Considering each of the arguments separately and specifically renders patent that our general conclusion is correct. The mistake alleged by appellants insofar as the SMA is concerned is that the Upper Marlboro Employment Area consists of 677 acres, while the actual inventory of the acreage

set out in the text totals only 597.75 acres. Appellants offer an explanation for the difference. On the other hand, the hearing examiner offered a different, but equally plausible, one. The District Council adopted the hearing examiner's explanation. Moreover, it had previously adopted the recommendation that appellants' property be zoned O-S. The evidence is fairly debatable.

Appellants also rely upon the fact that, although their property is in the floodplain, the acreage sought to be rezoned can now be developed by filling. They contend that this was not known at the time of the adoption of the SMA in 1977. there is evidence to dispute that allegation. As the trial judge observed, there were parcels in the floodplain which were zoned industrial and commercial. Moreover, it was recommended, which recommendation was

adopted by the District Council in 1977, that appellants' property be placed in "the permanent low density, rural living area as identified in the Master Plan [as] open-space zone." Again, the evidence was fairly debatable.

Appellants' final contention is that there was a change in the neighborhood which justified rezoning its property. There is no dispute that there was a rezoning of a property across Route 301 from the subject property from I-3 to C-S-C, commercial shopping center. There is a dispute, however, as to whether that change impacts on appellants' property. The District Council found that it did not and that finding is supported by the facts that the property is located across a major highway and also that it is but

one relatively small parcel. That evidence, in and of itself, is sufficient to render the issue fairly debatable.[3/]

2

Maryland Rule B7a provides:

> Promptly after receipt of a copy of the first petition filed in a case pursuant to Section e of Rule B2 (How Appeal Taken) and in any event within thirty days after receipt, unless a different time shall be fixed by order entered pursuant to Section b of this Rule, the agency shall transmit to the clerk of the court the original or certified copy of the record of its proceedings, including any transcript of testimony and any exhibit filed therein, if the testimony has been recorded

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[3/] Appellants at oral argument conceded that it came close to demonstrating a mistake in the SMA, they having agreed with appellee that it is only a change in the comprehensive rezoning, as opposed to a master plan, which could justify rezoning, see Pattey v. Board of County Commissioners for Worcester County, 271 Md. 352, 360-61 (1974); the necessary implication of that concession is that appellants did not meet their burden of demonstrating a mistake. In any event as we have already pointed out, the issue of mistake was fairly debatable.

> but not transcribed prior to the filing of the appeal, the appellant, unless otherwise provided by law, shall, if required by the agency, pay the expenses of transcription and the expense shall be taxed as costs; provided, that there shall be omitted such papers as the parties to the appeal shall designate by stipulation, and such stipulation shall be transmitted with the record.[4/]

Maintaining that the rule and § 8-106(f) required the District Council to maintain a stenographic record of the oral

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[4/] Maryland Code Ann. Art. 28, §8-106(f), which appellants maintain is also implicated, provides:

> (f) Procedure for appeal. - Within 30 days of service of a petition or within whatever further time the court may allow, the district council shall transmit to the reviewing court the original or a certified copy of the entire record of proceeding under review. By stipulation of all parties to the review proceedings, the record may be shorten. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections to the record when deemed advisable.

argument, which was to be filed with the appellate court within 30 days of an appeal of the District Council's decision, appellants moved to dismiss appellees' opposition to their appeal. The motion to dismiss was filed approximately a year after the record had been filed with the circuit court. Appellants did not specify any basis for the motion to dismiss, that is to say, it alleged no improprieties concerning the proceedings before the District Council, and it has not done so on appeal. Its only contention is that the failure of the District Council to forward a record of the hearing,specifically, the transcript of oral argument, before the District Council disqualified appellees from opposing appellants' appeal in the circuit court.

Assuming that appellants read the rule correctly - as requiring the District Council to maintain a record of the oral arguments before it[5/] - dismissal of appellees' opposition to the appeal would not necessarily, or even probably, result in a victory for appellants; appellants would still have to demonstrate that the District Council's decision was not supported by substantial evidence, which, as we have seen, they could not do. Moreover, the filing of the motion to dismiss long after the record had been filed and without alleging any prejudice occasioned by the failure to include a

---

[5/] That reading seems to be overly broad since the rule addresses "any transcript of testimony", not a transcript of any hearing before the District Council. Indeed, the rule appears to address not simply the District council proceeding, but the overall rezoning process, including proceedings in which testimony is taken.

transcript of the oral argument raises a substantial question as to whether appellants waived the objection.

In any event, we do not believe that appellants' reading of Rule B7a is correct. Nothing in the rule, expressly, or by implication, requires that arguments of counsel should, or must, be transcribed. We conclude from the plain language of the rule, therefore, that appellants' reading of it is totally inappropriate.

3, 4, 5

Appellants' 1st three arguments all charge that the lower court abused its discretion in making certain rulings. First, they focus upon the court's limiting argument on appellants' appeal to a maximum of one hour. Appellants' had requested two hours of oral argument. They assert that, "[i]n light of the complex nature of the issues in this

case," the court's limitation of argument was an abuse of discretion. Appellants neglect to acknowledge that the court offered to continue the case so as to allow them additional time, an offer appellants refused, or that they, through counsel, acceded to the limitation proposed by the court. In addition, despite the limitation, appellants were permitted to argue for more than one hour.

Continuing to focus upon the limitation of the oral argument, appellants also maintain that it was an abuse of discretion for the court to refuse to allow them to use "summary exhibits" to aid their oral presentation. Apparently perceiving the "summary exhibits" as "new" evidence, not before the hearing examiner or the District Council, the court refused appellants' request that they be used. It was within

the court's discretion to do so. Appellants do not dispute this. More importantly, they do not, either in their brief, or in the joint record extract, identify of what these "summary exhibits" consisted. All we have is appellants' conclusion that the "summary exhibits' were essential to their oral presentation. That is not sufficient basis upon which to fin an abuse of discretion and we decline to do so in this case.

Appellants' final contention is that the trial court abused its discretion by refusing to reconsider its ruling affirming the District council's denial of appellants' rezoning application in light of the filing of condemnation proceedings against appellants' property shortly thereafter. Suffice it to say that the filing of condemnation proceedings provided no sufficient basis

to have permitted the court to have reconsidered its ruling. The court was bound to decide the case base upon the record developed in the agency. The condemnation proceedings did not constitute a part of that record and its pendency was not, therefore, a proper factor to be considered in that regard.

JUDGEMENT AFFIRMED.

COST TO BE PAID BY APPELLANTS.

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

ATTA MOSHKELGOSHA, et al. :

Plaintiffs :

v. : CAL 87-6120

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY MARYLAND, SITTING AS THE DISTRICT COUNCIL :

Defendants :

Filed: May 18, 1988

OPINION AND ORDER

This case comes before this Court on appeal from an Order of the County Council of Prince George's County, sitting as the District Council. The District Council, adopting the findings and conclusions of the Zoning Hearing Examiner, denied Appellants' request for zoning of approximately 22 acres from the O-S (Open Space) Zone to the C-S-C (Commercial Shopping Center) Zone. Appellants argue that the District Council erred in placing the subject property in the O-S Zone at the time of

the 1977 comprehensive rezoning. (Upper Marlboro and Lower Patuxent Area Sectional Map Amendment, 1977). Secondly, they argue that there has been a substantial change in the neighborhood which warrants a change to the C-S-C Zone.

The Appellants bear a heavy burden in seeking to reverse a decision of the District Council. In reviewing the Council's decision this Court may not substitute its judgment for that of the Council. Only when there is no room for reasonable debate or where the record is devoid of substantial supporting facts may this Court reverse a decision of the District council or declare its action arbitrary, capricious, or illegal Prince Georges' Co. v. Meininger, 264 Md. 148, 152, 285 A.2d 649 (1972); Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 17, 276 A.2d

646 (1971). As the Court of Appeals stated in Brouillet v. Eudowood Plaza, 249 Md. 606, 608, 241 A.2d 404, 405 (1968):

> . . . The zoning authority is presumed to possess the experience necessary for deciding the matters brought before it and if its decision is based on substantial evidence then the courts may not substitute their judgment for that of the zoning authority.

Keeping this standard of review in mind this Court will not review the facts of this case.

Appellants' first argument is the District Council erred in placing the subject property in the O-S Zone, and that the Master Plan indicated that the subject property was commercial property. In fact both the Appellant and Appellee

agree that the subject property appears to be zoned commercial on Map 2 (existing Situation Map) of the Adopted & Approved Master Plan for Subregion VI (July, 1973). The Appellee contends that that designation on the Map was an error and that other Maps contain additional errors. Map 4 (Physical Characteristics) of the Master Plan, for example, shows the subject property to be outside the floodplain, while both parties agree that the property, as is, lies within the floodplain. Additionally the text of the Adopted and Approved Master Plan for Subregion VI (Page 11) clearly places the subject property outside of the Upper Marlboro Employment area -- a fact that the Appellants disagree with but do not rebut.

The Appellants next challenge the accuracy of the Upper Marlboro and Lower Patuxent Area Sectional Map Amendment ("SMA") (1971). The SMA text (Pages 80 and 83) states that there is a total of 677 acres in the Upper Marlboro Employment Area, an area within which Appellants contend their property is situated. However, the inventory of acreage within the Upper Marlboro Employment Area contained in the Impact on Zoning Inventory Table (SMA Text pp. 39-40) totals only 597.75 acres. Appellants contend that their property was mistakenly omitted from this inventory, and that if the acreage of their property, along with several other parcels not owned by them, are added to the 597.75 acres listed in the Zoning Inventory Table, the figure of 677 acres mentioned on pages 80 and 83 of the SMA

text is reached. Appellee contends that the 677 acre figure was a mistake and that the correct acreage for the Upper Marlboro Employment Area is 597.75.

The Court notes that the physical description of the Upper Marlboro Employment Area clearly excludes the subject property (SMA Text, Page 80), as does the map on page 83 of the SMA. Also the SMA text specifically recommended O-S Zoning for the subject parcels. (SMA Text, page 110).

Based on these facts, this Court concludes that the District council's finding that the subject property was not intended for commercial zoning, was based on substantial evidence.

The Court similarly finds that the District Council's finding that there were no conditions of change justifying a

rezoning of the subject parcel, was based on substantial evidence. Appellants' "change" argument has 2 prongs. First, they argue that the property can now be filled, and thus taken out of the floodplain, a fact not known at the adoption of the SMA in 1977. (T.33) However, the fact that the property was in the floodplain was not the sole reason for the O-S Zoning. Indeed, a number of parcels in the floodplain of the Upper Marlboro Employment Area were zoned industrial and commercial. (Exh. 37) The apparent reason for the O-S Zoning was that the subject property was located in a rural living area proposed for low-density development. "The SMA recommends that the permanent low-density, rural living area as identified in the Master Plan be rezoned to the Open-Space Zone. (SMA text, 56).

The second prong of the "change" argument concerns a small parcel of land across Rte. 301 from the subject property which was changed from I-3 Zone to a C-S-C Zone in 1984. the basis for that change rested on completely different grounds than those at issue here (Ex. 35). The zoning change for the parcel across Rte. 301 to a C-S-C Zone does not impact on the character of the subject property as it is located across a major highway.

For the reasons stated above, it is this 18th day of May, 1988, by the Circuit Court, sitting as the District Council of Prince George's County, sitting as the District council in reference to Zoning Map Amendment Application A-9596 is hereby AFFIRMED.

S/

ROBERT J. WOODS, JUDGE

Copies sent by the court to:

County Council of Prince George's
(District Council)
Jess Joseph Smith, Jr., Esq.
Joyce Hope, County Attorney
By: /S

Case No.: A-9 6
Applicants: Atta Moskelgosha
and Mortaza Sholough

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

Filed: March 10, 1987

IT IS HEREBY ORDERED that Appellant No. A-9596, requesting rezoning from the O-S Zone to the C-S-C Zone, for property described as approximately 22 acres, and also described as 6000 S.E. Crain Highway, located on the Southeast side of Crain Highway approximately 2,100 feet southwest of Maryland Route 4, be and the same hereby is

DENIED, for the reasons states in the attached findings and conclusions of the Zoning Hearing Examiner, which are hereby adopted as the basis for denial, in addition to the following findings:

1. The District Council finds that several technical errors were made both in the contents of the text and in the maps accompanying the SubregionVI Master Plan (1973) and the Upper Marlboro an Lower Patuxent Sectional Map Amendment (1977).

2. The District council concludes that despite these technical errors in the adoption process of the Master Plan and the Sectional Map Amendment, that the Section Map Amendment clearly excludes the subject property from the Upper Marlboro Employment Area.

3. The District Council additionally concludes that the Sectional Map Amendment recommends that the subject property be retained in the permanent low-density, rural living area as indentified inthe Master Plan.

Adopted this 10th day of March, 1987, by the following vote.

In Favor: Council Member Pembeton, Bell, Castaldi, Casula, Cicoria, herl, Mills and Wineland

Opposed:

Abstained:

Absent: Council Member Wilson

Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-WASHINGTON REGIONAL DISTRICT IN PRINCE GEORGE'S COUNTY, MARYLAND

By: _____
Hilda R. Pemberton, Chairperson

ATTEST:

_____
Jean M. Schmuhl, Clerk

(2)

89-1291

Supreme Court, U.S.
FILED
MAR 13 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1989

ATTA MOSHKELGOSHA, ET. AL.,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

SUPPLEMENTAL APPENDIX FOR PETITIONER

Atta Moshkelgosha
Pro se
9239 Greenwood Lane
Lanham, Maryland
80706

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER Term, 1989

ATTA MOSHKELGOSHA, ET. AL.,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF SPECIAL APPEALS OF MARYLAND

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SUPPLEMENTAL APPENDIX A

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Publications

Mallen, Legal Malpractice, ch. 7, 2nd ed. (1981) 6, 7

Mallen, Conflicting Interest, ch. 8, 2nd ed. (1981) 8

SUPPLEMENTAL STATEMENT OF THE CASE

The record contained in the Supplemental Appendix, the original Appendix, and the Petition for Writ of Certiorari all reflect that Prince George's County, Maryland, has been Petitioner's adversary for at least five years. The Supplemental Appendix further reveals that Petitioner's counsel, employed by co-counsel, prepared Petitioner's Record Extract, Brief and Reply Brief <u>against</u> Prince George's County, Maryland, filed in the Court of Special Appeals of Maryland. The Supplemental Appendix also reflects that counsel for Petitioner was for at least two years prior thereto, employed by

Petitioner's adversary, Prince George's County, Maryland, as an Assistant Public Defender.

The record reflects that the interests of Prince George's County, Maryland and Petitioner were diametrically opposite; Petitioner seeking to upgrade and enrich the value of his property to commercial, and Prince George's County, Maryland, seeking to acquire Petitioner's property at the lowest possible value. Although facts of the entire scenario were known to both counsel, neither advised Petitioner of the serious conflict of interest; even though the conflict existed not only from the patent infraction of being employed by Prince George's County, Maryland, but from an even more serious aspect, economic and monetary, as well.

Petitioner had no knowledge of the conflict of interest until March 1990, long after his appeal was lost in the Court of Special Appeals of Maryland by the Assistant Public Defender and his co-counsel. But for the fortuitous circumstance of being in Court when Petitioner's counsel identified himself as an Assistant Public Defender, the secret might have gone undetected forever.

The Supplemental Appendix reveals additional evidence corroborating the fact that Prince George's County, Maryland, and several of its Agencies have been interested in acquiring Petitioner's property since 1984, and that the interest continued during Petitioner's litigation through the Agencies and Courts of Maryland, that

interest in acquiring Petitioner's property continues presently through condemnation proceedings, and as demonstrated by communications as late as June and August, 1989.

The Supplemental Appendix further supplement the record corroborating the fact that a prior attorney had manifested an interest in acquiring one-third of Petitioner's property, after having contracted for a fee agreement. At no time did counsel for Petitioner advise the Court of their conflict of interest; nor did they advise the Court of another attorney's effort to acquire a substantial portion of Petitioner's property.

SUPPLEMENTAL ARGUMENT IN FAVOR OF GRANTING WRIT

The attorney-client relationship imposed upon both counsel who represented Petitioner in the Court of Special Appeals of Maryland fiduciary obligations to represent Petitioner, inter alia with "undivided loyalty." This precluded counsel from representing Petitioner and Prince George's County with competing interests.

Both counsel for Petitioner were under a duty to disclose that appellate counsel who compiled the Extract of Record, prepared the Brief, the Reply Brief, and argued the case in the Court of Special Appeals of Maryland was an Assistant Public Defender, an employee of Prince George's County, Maryland.

This rule is as "old as the hills" 1880. See Baker v. Humphrey, 101 U.S. 494 (1880), and more recently Westinghouse Elec. Corp. v. Kerr-McGee Corp., 580 F. 2d, 311 (7th Cir. 1978), cert. denied, 439 U.S. 955.

The State of Maryland has observed the same rule, almost as long ago as the Federal system. See Merryman v. Euler, 59 Md. 588 (1882) 1; and subsequently Hughes v. McDaniel, 202 Md. 626, 98 A.2d 1 (1953). For a comprehensive study, see Mallen, Legal Malpractice, Ch. 7, 2nd ed. pp. 208-237 (1981).

Counsel for Petitioner not only had a duty to disclose his employment with Prince George's County, but his salary, as well as his length of tenure. In the absence of this disclosure, counsel are guilty of "constructive fraud." Baker v.

Humphrey, supra. This failure to disclose deprived Petitioner of his options: 1) the right to refuse to employ counsel; 2) the right to fire or discharge counsel; and 3) the right to obtain counsel not on the payroll of Respondent. Counsel failed to disclose inter alia, "an adverse interest of a prior client, or a conflict interest of another client." (Footnote omitted) Mallen, supra, p. 219. Hence, Petitioner was betrayed by his counsel.

Moreover, counsel for Petitioner were precluded from representing Prince George's County, on one hand, and Petitioner on a second-subsequent client on the other, by a maxim that has existed almost since time immemorial, "no man shall serve two masters." See Jeffrey v.

Pounds, 67 Cal. App.3d 6, 136 Cal. Rpr. 373 (1977), Mallen, Conflicting Interest, supra., ch. 8, p. 238.

Whatever differing connotations emerge from the doctrine of conflicting interest, there can be no question counsel can not, simultaneously, represent a first "master," Prince George's County, Maryland, Respondent, and a second subsequent "master," Petitioner, who has sued Respondent. Petitioner and Respondent possess diametrically opposing interests. Counsel can not be on the payroll of one and representing the other.

The Appendix, Supplemental Appendix, and total record reflect Petitioner's record in the Agencies as well as in the Courts, is not as good as it ought to have been. Counsel's Briefs in the Court

of Special Appeals of Maryland failed to highlight that Prince George's County, Maryland, for whom he worked, was seeking to obtain Petitioner's property at a lower economic value, while Petitioner was litigating to increase the value of his property to commercial. Similarly, counsel for Petitioner failed to highlight that another attorney had sought to acquire an interest in Petitioner's property. All of these relevant facts were available and should have been squarely put before the Court of Special Appeals of Maryland. Perhaps, it is too much to expect counsel to advise the Court of his conflict of interest in Petitioner's Brief.

This actual conflict of interest is not allowed in the face of a "client's loss of confidence," not to mention loss

of his best representation. Jeffrey v. Pounds, supra. See Mallen, supra., ch. 8, §151, p. 243.

What is stated respecting the role of the Court in Mallen, supra, is equally apposite here:

> A court occupies a central position in investigating and reviewing ethical conduct which could affect the integrity of the profession. A judge not only has supervisory authority over the ethical conduct of attorneys appearing before it, but also an independent obligation to assure proper ethical conduct. The supervisory responsibility is such that the court should act upon its own motion if it observes what appears to be the representation of conflicting interests. In fact, even appellate courts in remanding a case for new trial have disqualified counsel from continuing to represent multiple

parties in the new trial, or have remanded that issue to the trial court to decide.

Mallen, continued and offered a solution, Id.

> Where necessary, the court should conduct an evidentiary hearing or factual inquiry to determine whether disqualification is appropriate. It has been suggested that the proceedings should be in camera. The court should inquire into the nature of the conflicts, the client's awareness of the conflicts, and their desire and need for separate counsel. The court should resolve issues of credibility and decide the ultimate facts in dispute. A record of the proceedings should be made for appellate review.

The court should also determine whether there has been a waiver of the conflict, whether the waiver was effective or whether a waiver was possible. In so doing,

> the court must consider the Canon 9 proscription against the appearance of impropriety, as well as public policy considerations which may be manifest.

Thereafter, Mallen, necessarily excluding the participation of offending counsel, thusly add:

> Finally, the court should determine the appropriate remedy, a function which cannot be delegated to counsel.

(Footnotes omitted, italics supplied). See Wood v. Georgia, ____ U.S. ____, 101 S.Ct. 1097 (1981).

From the foregoing, the conclusion is inescapable, counsel for Petitioner violated Petitioner's right against "conflict of interest" By so doing, Counsel for Petitioner denied Petitioner

his right to due process, and equal protection. The law has fashioned a remedy for this. It is appropriate here.

CONCLUSION

In view of the Petition for Writ of Certiorari, the Supplemental Petition, the Appendix, the Supplemental Appendix, and the record in toto, it is respectfully submitted that Petitioner's Petition and Supplemental Petition for Writ of Certiorari be granted.

Respectfully submitted.

Atta Moshkelgosha

Atta Moshkelgosha
Pro se
9239 Greenwood Lane
Lanham, Maryland
20706

CERTIFICATE OF SERVICE

I hereby certify that 3 copies of the Supplemental Petition for Writ of Certiorari were mailed postage prepaid this 12th day of March, 1990 to: Joyce Birkel Hope, Esq., County Administrtion Building, Upper Marlboro, MD 20772.

Atta Moshkelgosha

Atta Moshkelgosha

SUPPLEMENTAL APPENDIX B

March 30, 1987 Fee Agreement from Gerard T. McDonough 35

December 26, 1986 ltr from Robert M. Arciprete re interest in purchasing property 38

April 25, 1986 ltr from Jeffrey L. Miller, re interest in property. 40

November 27, 185 ltr from County Executive re interest in property 43

July 30, 1985 ltr from Water Resources Admin. re intent to issue permit 46

May 24, 1984 ltr from Mr. Amonett re interest in Old Marlboro Raceway 49

A F F I D A V I T

This is to certify, under penalty of perjury that:

1. On or about March 6, 1990, Benjamin J. Woolery, Esquire identified himself in "open court of the Circuit Court of Prince George's County, as an Assistant Public Defender.

2. On or about March 9, 1990, Miss Betty Beck, Deputy Administrative Chief, Office of Public Defender, Prince George's County advised Benjamin J. Woolery, Esquire, is currently an employee of the Office of the Public Defender, and has been "for two years."

3. A document from Prince George's County Office of Personnel reveals that Benjamin J. Woolery, Esquire, has a Social Security No. of 214-78-0449, and

served as a law clerk in the Circuit Court of Prince George's County from 1986 to 1988.

4. On March 9, 1990, counsel employed to represent Petitioner in the Court of Special Appeals of Maryland, Richard M. McGill, Esquire, advised for the first time, that Benjamin J. Woolery, Esquire, was and still is an employee of the Office of the Public Defender, and an employee in his office.

5. Records of the Office of the Public Defender lists Benjamin J. Woolery as an Assistant Public Defender (Ap. 7).

6. The Retainer Agreement executed by Richard M. McGill, Esquire on February 19, 1989, neither advised that Benjamin J. Woolery, Esquire would prepare the Briefs, or argue his appeal in the

Maryland Court of Special Appeals, nor that Mr. Woolery was simultaneously an Assistant Public Defender (Ap. 11).

7. Benjamin J. Woolery, Esquire acknowledged his preparation of the Statement of Facts (Ap. 16).

8. The Brief, Reply Brief and Record Extract in the Court of Special Appeals of Maryland list Richard M. McGill, Esquire, and Benjamin J. Woolery, Esquire as "Counsel for Appellant" (Ap. 17-20).

9. "Update Case Records" reflect that "Woolery, Benjamin J." argued the appeal representing Appellant in the Court of Special Appeals of Maryland (Ap. 21).

10. The undersigned was not advised of the dual capacity of Benjamin J. Woolery, Esquire, until he witnessed the

self-identification of Mr. Woolery as an Assistant Public Defender in open court of the Circuit Court of Prince George's County.

11. A May 24, 1984, letter from Councilman Amonett to Water Resources Administration shows an interest in the commercial development of the old Marlboro Raceway by the Councilman and Prince George's County Department of Public Works (Ap. 49).

12. A July 30, 1985, letter shows an intention to issue a permit by Water Resources Administration respecting Petitioner's property (Ap. 46).

13. A November 27, 1985, letter from the County Executive of Prince George's County to the Washington Suburban Commission shows an interest in Petitioner's property (Ap. 43).

14. An April 25, 1986, letter from Washington Suburban Commission shows an interest in Petitioner's property (Ap. 40).

15. A December 26, 1989, letter shows an interest in Petitioner's property by the Maryland National Capital Park and Planning Commission (Ap. 38).

16. A Summons and Petition for Condemnation of Petitioner's property was issued May 13, 1988, during pendency of Petitioner's legal battles against the County and State (Ap. 27-30).

17. A letter of June 1, 1989, by former Councilmember Amonett who wrote the May 24, 1984 interest letter, now Land Acquisition Consultant to the Maryland National Capital Park and

Planning Commission, continues to show an interest in "acquiring your property" (Ap. 24).

18. An August 1, 1989, letter from Mr. Amonett still expresses an interest "in purchasing" the "property of Atta Moshkelgosha" (Ap. 22).

19. A March 30, 1987, letter shows the original fee agreement with Gerard T. McDonough, Esquire (Ap. 35).

20. An August 4, 1987, letter shows modification of March 30, 1987, Fee Agreement, seeking to acquire an interest in Petitioner's property. (Ap. 31-35).

Atta Moshkelgosha

Atta Moshkelgosha

Prince George's County

REGISTER OF WILLS

Register: Callie M. Heffron

Chief Deputy: Elizabeth H. Leitch

Assistant Chief Deputy: Gail T. Wilkerson

Chief Auditor: Joanne L. O'Brien

COURT RELATED AGENCIES

OFFICE OF THE STATE'S ATTORNEY

State's Attorney: Alexander Williams, Jr.

Administrative Division

Criminal Trials Division

District Court Division

Domestic Violence Unit

Juvenile Division

Screening & Investigations Division

Location of the State's Attorney Offices:

Upper Marlboro: Court House, Suite 410

14735 Main St., Upper Marlboro 20772

Hyattsville: County Service Bldg., Room

218, 5012 Rhode Island Ave., Hyattsville 20718

OFFICE OF THE PUBLIC DEFENDER

15050 Buck Lane, Upper Marlboro 20772

General Information

District Public Defender: E Allen Shepherd

Deputy District Public Defender: Autry N. Noblitt

Juvenile Court Division:

Court House, Upper Marlboro 20772

Investigations Division:

15050 Buck Lane, Upper Marlboro 20772

Clayton Aarons	Bruce Marcus
Carl Buckheister	F. Anthony McCarthy
Richard Bury	James Nickelsporn
Brian Denton	Joseph Niland
Melanie Fishkind	V. Lesa Noblitt
Janet Hart	Kay L. Parris
Douglas Irminger	Nick Rattal
Leonard Kuentz	Gale Saccarelli

Maureen Lamasney
Matt Lavine
Dent Lynch
Ed Sobansky
Gary Ward
John Ward
Elvira White

Supplements:

Joan Ardery
Perry Becker
Chris Bryan
Russell Butler
Sean Cleary
Steve Cohen
Gary Courtois
Mary Crawford
Gary Davis
Joanne Brozdosk
Don Garvey
Lisa Goldfarb
Leo Green, Jr.
Charles Hall
Chris Hamlin
Mike Kaiser
Matt Lavine
Carol Lawson
Mary McGillicu
Leslie Moore
Eric Nyce
Keith Parris
Crystal Pinkney
Rosalyn Pugh
Ross & Powell
Joel Shoap
Linda Spevack
Tim Sullivan
Fran Taylor
William Ticer

Ed Hanlon

John Hanrahan

Jay Harvey

Wynee Hawk

Josephine Torn

Jeff Wennar

Howard Wilson

Ben Woolery

RETAINER AGREEMENT

This Agreement, made this 19 day of February, 1989, by and between Richard M. McGill, known herein as "Attorney", and the undersigned, Atta Moshkelgosha, known as "Client":

That in consideration of Client's promise to pay $10,000.00, as evidenced by the attached Confessed Judgment Note, Attorney is hereby retained by Client to assemble, prepare, organize, and argue an Appeal from the Circuit Court of Prince George's County, Maryland to the Court of Special Appeals in Case No. 1185 (Sept - 1988), entitled Atta Moshkelgosha v. Prince George's County, Maryland.

The above fee is fair and reasonable and represents time spent and time anticipated to be spent in the finalization and argument of said Appeal. Said fee is based also in part

on the fact that Attorney was retained approximately twelve (12) days before the final deadline for filing appellant's amended brief. Therefore, full time and attention of one Attorney for the entire twelve (12) day period was required.

It is understood and agreed that Attorney has made no guarantees regarding the successful termination of this matter, and all expressions by attorney are opinion only.

In the event additional court action is necessary, it is agreed that this retainer agreement refers only to the Appeal in the Court of Special Appeals, and specifically does not provide for an Appeal to the Court of Appeals or argument on remand to the Circuit Court for Prince George's County, Maryland.

Dated Feb. 19, 1989

/Original Signed/

Richard M. McGill, Attorney

/Original Signed/

Atta Moshkelgosha, Client

CONFESSED JUDGMENT NOTE

$10,000.00

14713 Main Street
P.O. Box 219
Upper Marlboro, MD
20772

February _____, 1989

For legal services regarding an appeal before the Court of Special Appeals of Maryland, the Undersigned promises to pay to the order of Richard M. McGill the sum of Ten Thousand ($10,000.00) Dollars at 14713 Main Street, Upper Marlboro, Maryland 20772, without interest, at the rate of Five Hundred ($500.00) Dollars per month, plus reasaonable attorney fees if placed in the hands of an attorney for collection. The first payment of $500.00 commences March 21, 1989 and will continue each and every month thereafter until said Ten Thousand ($10,000.00) Dollars is paid in full.

The Undersigned and all Endorsers, Sureties, and Guarantors hereof, hereby jointly and severally waive presentment, demand for payment, notice of dishonor, notice of protest and protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement or guarantee of this instrument.

The Undersigned hereby authorizes the Clerk of any Court, of competent jurisdiction, to enter judgment by confession against him in the event this Note is not paid when due. The due date for each payment is the First Day of Every Month.

/Original Signed/

Atta Mos[illegible]elgosha

Atta, I'm in the Library. There was a problem with the printer that is fixed now but it put off my time table. I have a copy of draft w/changes in Statement of Facts if you want to come to Library.

Benjamin

BEST AVAILABLE COPY

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1988

No. 1185

ATTA MOSHKELGOSHA ET AL

Appellants

VS.

PRINCE GEORGE'S COUNTY, MARYLAND

Appellee

Appeal from the Circuit Court

for Prince George's County, Maryland

(Honorable Robert J. Woods, presiding)

APPELLANTS' BRIEF

Respectfully Submitted,

Richard M. McGill, Esq.

Benjamin J. Woolery, Esq.

Counsel for Appellants

IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 1988

NO. 1185

ATTA MOSHKELGOSHA, et al.,

Appellants,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Appellee.

APPEAL FROM THE CIRCUIT COURT

FOR PRINCE GEORGE'S COUNTY, MARYLAND

(Honorable Robert J. Woods, Judge)

REPLY BRIEF OF APPELLANT

Richard M. McGill, Esq.

Benjamin J. Woolery, Esq.

Counsel for Appellant

14713 Main Street

P.O. Box 219

Upper Marlboro, MD 20772

(301) 627-5222

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1988

No. 1185

ATTA MOSHKELGOSHA ET AL

Appellants

VS.

PRINCE GEORGE'S COUNTY, MARYLAND

Appellee

Appeal from the Circuit Court

for Prince George's County, Maryland

(Honorable Robert J. Woods, presiding)

RECORD EXTRACT

Respectfully Submitted,

Richard M. McGill, Esq.

Benjamin J. Woolery, Esq.

Counsel for Appellants

Atta Moshkelgosha et al.

v.

Prince George's County, Maryland

No. 1185, Sept. Term, 1988 Date ..2/21/89

Filing Fee

Record Received...10/27/88

Lower Court.....PRINCE GEORGE'S

Admin. App.--Zoning

Appellant Brief Due.....2/21/89

Argument Date.....4/03/89

Panel.....MOYLAN JR., CHARLES E.

BLOOM, THEODORE G.

BELL, ROBERT M.

Comments:

The brief & extract was filed today

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Enter/Update Case Records          Screen 7 of 7
Appeal No.........Term 88 Type    No. 1185
Appeal Case Title..MOSHKELGOSHA V. P.G. CO.
Attorneys ---(1-Appellant,2-Appellee,3-Other)
      No. Type Arg  Represnt  Attorney Names
1-0001517  2    Y              HOPE ESQUIRE, J
2-0003195  1    N              MCGILL, RICHARD
3-0006450  1    N              MOSHKELGOSHA, A
4-0006924  1    Y              WOOLERY,BENJAMIN
5-0000000  0
6-0000000  0
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10-0000000 0
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          Case Record **
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Accept Record  Cmd7-End of Job  Cmd4-Display/
Update Attorney Master File
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THE MARYLAND-NATIONAL CAPITAL PARK

AND PLANNING COMMISSION

6600 Kenilworth Avenue, Riverdale, MD 20737

August 1, 1989

Mr. Atta Moshkelgosha

9239 Greenwood Lane

Lanham, Maryland 20706

Dear Mr. Moshkelgosha:

Re: Western Branch Stream Valley Park/
Property of Atta Moshkelgosha,
3rd Election District, Prince George's
County, Maryland, Parcel 14, Tax Map 102
Grid B-3, Liber 5374, Folio 617
(My Letter of June 1, 1989)

I enclose a copy of my letter of June 1, 1989, for your reading. The Parks Department is interested in purchasing the above referenced land for conservation purposes. I

believe a purchase by thee Parks Department would be to the betterment of all parties. You may call me at 699-2555 or 899-1598. Should I not be at the latter number, there is an answering machine for your convenience in leaving a message.

Sincerely,

/Original Signed/

William B. Amonett

Land Acquisition Consultant

Encl

/ejo

THE MARYLAND-NATIONAL CAPITAL PARK

AND PLANNING COMMISSION

6600 Kenilworth Avenue, Riverdale, MD 20737

June 1, 1989

Mr. Atta Moshkelgosha

9239 Greenwood Lane

Lanham, Maryland 20706

Dear Mr. Moshkelgosha:

Re: Western Branch Stream Valley Park/
Property of Atta Moshkelgosha
3rd Election District, Prince
George's County, Parcel 14, Tax Map
102, Grid B-3, Liber 5374, Folio 617

As you know, I have previously discussed the possibility of the Commission acquiring your property. The Commission has the responsibility of acquiring, for conservation purposes, those sensitive lands which lie

along the steam valleys. Your land falls within the framework of this policy. A good portion of your land is flood plain and needs to be protected from development in the public interest as part of the protection of the rivers and the Chesapeake Bay. All of our land acquisitions are made pursuant to independent appraisals based on actual market value of the subject. I would appreciate hearing from you at your earliest convenience.

Thank you for your consideration.

Sincerely,

/Original Signed/

William B. Amonett

Land Acquisition Consultant

WBA:ejo

PETITION, EXHIBITS, DECLARATION & FEE PD

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

NORMAN L. PRITCHETT

CLERK OF THE CIRCUIT COURT

COURTHOUSE

UPPER MARLBORO, MD 20772-9907

WRIT OF SUMMONS CASE NUMBER CAL88-07380

STATE OF MARYLAND, PRINCE GEORGE'S COUNTY TO WIT:

TO: ATTA MOSHKELGOSHA

9239 GREENWOOD LANE

LANHAM MD

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY:

WASHINGTON SUB SAN COMM

4017 HAMILTON STREET

HYATTSVILLE, MD

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS

UPON YOU

WITNESS THE HONORABLE ERNEST A. LOVELESS, JR., CHIEF JUDGE OF THE SEVENTH JUDICIAL CIRCUIT OF MARYLAND.

DATE ISSUED 05/13/88

TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF'S RETURN

FEE $ _____ SHERIFF _____

NOTE:

1. THIS SUMMONS IS EFFECTIVE FOR SERVICE ONLY IF SERVED WITHIN 60 DAYS AFTER THE DATE IT IS ISSUED.

2. PROOF OF SERVICE SHALL SET OUT THE NAME OF THE PERSON SERVED, DATE AND THE PARTICULAR PLACE AND MANNER OF SERVICE. IF SERVICE IS NOT MADE, PLEASE STATE THE REASONS.

3. RETURN OF SERVED OR UNSERVED PROCESS SHALL BE MADE PROMPTLY AND IN ACCORDANCE WITH RULE 2-126.

4. IF THIS SUMMONS IS SERVED BY PRIVATE PROCESS, PROCESS SERVER SHALL FILE A SEPARATE AFFIDAVIT AS REQUIRED BY RULE 2-126(A).

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

WASHINGTON SUBURBAN	:	
SANITARY COMMISSION	:	
4017 Hamilton Street	:	
Hyattsville, Maryland	:	
Plaintiff	:	
v.	:	Case No. CAL88-
ATTA MOSHKELGOSHA	:	07380
9239 Greenwood Lane	:	
Lanham, Maryland	:	
and	:	
MORTAZA SHOLOUGH	:	
Address Unknown	:	
and	:	
JAMES H. BERKELEY, TRUSTEE	:	
10601 Baltimore Boulevard	:	
Beltsville, Maryland	:	
Defendants		

PETITION FOR CONDEMNATION

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Petitioner, Washington Suburban Sanitary Commission, by its attorney, respectfully shows as follows:

1. Petitioner is an agency of the State of Maryland, organized and existing under the laws of the State of Maryland, engaged in performing the governmental function, within the boundaries of the Washington Suburban Sanitary District in Montgomery and Prince George's Counties, Maryland, of furnishing the inhabitants of said District with water, sewer and other services.

Law Offices

ZANECKI, LALLY & MCDONOUGH

One Metro Center

3100 Professional Place, Suite 113

Landover, Maryland 20785

(301) 459-9393

FAX (301) 459-8720

August 4, 1987

Mr. Atta Moshkelgosha

c/o ALM Mechanical Contractors

6000 SE Crain Highway

Upper Marlboro, Maryland 20772

RE: Modification of March 30, 1987 Fee Agreement

Dear Mr. Moshkelgosha:

Pursuant to our discussions subsequent to our last fee agreement, dated March 30, 1987, for legal services to be performed in

conjunction with the Old Marlboro Raceway site which is presently the subject of an ongoing Zoning Appeal in the Circuit Court (Case No. CAL-87-06120), we agree to modify the scope of legal services and fees as outlined below. Your signature on the acceptance line below will signify your acceptance of and agreement to this modification.

The legal services to be provided by our firm will continue to include the prosecution of the existing appeal to a decision by the Circuit Court. Our service under this modification shall be expanded to include, prosecuting further appeals of any adverse decision of the Circuit Court up to and including the Court of Appeals; argument of the zoning case before the District Council on remand, if any; investigation and prosecution of a Petition for Inverse

Condemnation, Mandamus or other equitable relief against the County or State, but not County or State officials as individuals; and/or pursuit of sale or settlement negotiations with any relevant governmental agency or any other party, public or private.

The legal fee arrangement shall be modified as follows: The non-refundable retainer of $2,500.00 of which our firm is in receipt pursuant to the March 30, 1987 argument shall be applied as our retainer concerning all the above legal services. The additional $2,500.00 payment due prior to argument of CAL 87-06120 before the Circuit Court shall be eliminated. Our firm shall be entitled to a contingency fee of thirty-three and one third percent (33 1/3%) of any monetary award or proceeds of sale arising out of any transaction on the subject property subsequent to the date of this

argument. If a rezoning is achieved and no transaction or transfer for consideration of the subject porperty takes place, then our firm shall be entitled to a thirty-three and one third percent (33 1/3%) equitable interest in the subject property and the client hereby agrees to execute such further documents or assurances as may be necessary to evidence and/or secure the above equitable interest.

Sincerely,

/Original Signed/

Gerard T. McDonough

ACCEPTED:

NEVER SIGNED

Atta Moshkelgosha

NEVER SIGNED

Mortaza Sholough

GTM/slm

Law Offices

ZANECKI, LALLY & MCDONOUGH

One Metro Center

8100 Professional Place, Suite 113

Landover, Maryland 20785

(301) 459-9393

FAX (301) 459-8720

March 30, 1987

Mr. Atta Moshkelgosha

A.L.M. Mechanical Contractors

6000 S.E. Crain Highway

Upper Marlboro, Maryland 20772

Re: Fee agreement, Marlboro C-S-C Zoning Appeal

Dear Mr. Moshkelgosha:

The following constitutes our agreement as to legal services to be provided by our firm and fees to be paid by you, as our client,

for legal services.

The scope of services shall consist of all research and filing necessary pleadings, motions, briefs, and other documents necessary to prosecute a B-Rule Zoning Appeal in the Circuit Court. It will also include appearance and argument of your appeal in the Circuit Court. This scope service specifically does not include appeal of any adverse decision of the Circuit Court to any higher Court nor reargument of the zoning case before the District Council pursuant to any remand. The firm agrees that the above Appeal shall be filed in the Circuit Court prior to April 16, 1987.

As client, you agree to pay a fee of $5,000.00 for the above legal services. $2,500.00 of which shall accompany a copy of this letter accepted by you as a retainer. $2,500.00 of which shall be due in 90 days

from the date of this letter.

Sincerely,

/Original Signed/

Gerard T. McDonough

ACCEPTED:

/Original Signed/

Atta Moshkelgosha

GTM/slm

The Maryland-National Capital Park
and Planning Commission
6600 Kenilworth Avenue, Riverdale, MD 20737
December 26, 1986

Mr. Atta Moshkelgosha
9239 Greenwood Lane
Lanham, Maryland 20706

Dear Mr. Moshkelgosha:

REF: Patuxent River Watershed Park/
Property of Atta Moshkelgosha
Parcel 14, Tax Map 102, Grid B-3,
Liber 5374, Folio 617
42.14+ acres - all in 100-year
floodplain

The Maryland-National Capital Park and Planning Commission is continuing its efforts to acquire available parcels of land bordering the Patuxent River and major tributaries as part of the Patuxent River

Watershed Park.

As shown on the attached plat, our records show that you own approximately 42 acres fronting on Route 301 which borders Western Branch tributary. This parcel also adjoins existing Commission parkland bordering your property along its southern boundary.

I would appreciate knowing if you are interested in selling this property to this Commission for public park purposes. Should you have any questions or wish to discuss this matter, please feel free to contact me at 699-2525.

Sincerely,

/Original Signed/

Robert M. Arciprete

Chief, Planning, Design and Research Division

Enclosure

RMA:fab

Washington Suburban Sanitary Commission

Department of Engineering

8103 Sandy Spring Road, Laurel, MD 20707

April 25, 1986

Mr. Atta Moshkelgosha

9239 Greenwood Lane

Lanham, MD 20801

Re: Western Branch Access Road

Contract No. 86CD6895-A

Dear Mr. Moshkelgosha:

Recently you received a letter from WSSC indicating that survey work would be performed in your area. This work has been completed, but I want to take the opportunity to clarify the intent of this project, the Westen Branch Access Road. Please refer to the attached map to locate your property with respect to this project.

The nearby Western Branch Wastewater

Treatment Plant access road intersects Route 301. Since the State Highway Administration removed the temporary crossover at this intersection, access to the plant is limited to those vehicles traveling North Bound. To avoid dangerous U-turns, a crossover is required. Since SHA limts the number of median crossovers, the Commission must use an existing one, opposite the Marlboro Square Shopping Center entrance. Therefore, a new road is needed to connect to the existing plant access road, as the map indicates.

Attached please find a copy of the letter from the County Executive which indicates his approval of the project. Your cooperation with WSSC in this matter is therefore requested. Further discussions will be necessary as the plan details are finalized and the land requirements confirmed.

Please contact me if you have any

questions, I may be reached at 441-4182 between 8:30 A.M. and 5:15 P.M. Monday-Friday. Your interest and cooperation in this endeavor will be greatly appreciated.

Sincererly,

/Original Signed/

Jennifer L. Miller

Project Manager

Project Management

Section #1

JLM/dw

Enclosures

cc: P.G. County Executive Office

BEST AVAILABLE COPY

The Prince George's County Government

(301) 952-4131

County Executive

November 27, 1985

Mr. Richard G. Hocevar

Acting General Manager

Washington Suburban Sanitary Commission

4017 Hamilton Street

Hyattsville, Maryland 20781

Re: Western Branch Access Road

Contract No. 81CD5141-D

Dear Dick:

This is a follow-up to my letter to you dated September 18, 1985, regarding the proposed permanent access road to the existing Western Branch Treatment Plant. Additional information has been brought to my attention concerning the proposed access road, including the estimated cost of construction and the highway safety issues.

On the basis of this information, I have concluded that there is more than adequate justification for the permanent access road.

The access road will use the existing crossover at the Marlboro Raceway. The Commission will acquire a right-of-way from the crossover along the east side of Route 301 to the existing Western Branch STP access road. The total cost of the project will be less than $200,000 including the cost of the right-of-way. Since this access road will allow trucks to deliver hazardous materials to the plant without making a U-turn on Route 301, the project is very desirable. This is especially true in light of the methanol deliveries which will be required when the denitrification units are constructed.

The Commission should, therefore, proceed with the construction of the access road beginning at the existing U.S. Route 301

median crossover opposite the old Marlboro Raceway. Should further assistance be required, please let me know. In the meantime, I would appreciate it if you can keep me informed of the status of this matter.

Sincerely,

/Original Signed/

Parris N. Glendening

County Executive

State of Maryland

Department of Natural Resources

Water Resources Administration

Tawes State Office Building

Annapolis, Maryland 21401

July 30, 1985

Mr. Atta Moshkelgosha

6000 South East Crain Highway

Upper Marlboro, MD 20772

Re: WRA File No. 84-WC-0381
Placement of fill material and construction of a secondary channel landscaped as a wetland within the 100 year flood plain limits of Western Branch at Old Marlboro Raceway in Prince George's County

Dear Mr. Moshkelgosha:

The Administration has completed the

review of your application for a Waterway Construction Permit. As a result of the review, the Administration intends to issue Waterway Construction Permit No. 84-WC-0381. However, a copy of the approved Soil and Erosion Control Plans is required prior to issuance of the permit.

In addition to the standard administrative conditions of the permit, the following special conditions shall apply:

1. A detailed topographical map of the site accurately delineating the limits of the 100 year floodplain of Western Branch must be submitted.
2. A certification satisfying the Prince George's County land use and zoning requirements must also be submitted.
3. Due to Class I classification of Western Branch and its habitat for 24 species of estuarine fish, such as alewife, blueback herring, and the semi-andromous

white and yellow perch, no in-stream construction is allowed from March through June, 15, inclusive.

4. Submission of the landscape plan for creation of 10 acres of wetland required by the Fisheries Division is also a must requirement.

Sincerely,

/Original Signed/

Charles K. Cover, Chief

Waterway Permits Division

MQT:gm

cc: David Henderson, Ben Dyer Assoc., Inc.

Prince George's County Council
County Administration Building
Upper Marlboro, Maryland 20772

May 24, 1984

James W. Peck, Director
Water Resources Administration
Maryland Department of Natural Resources
Tawes State Office Building, Room D-2
Annapolis, Maryland 21401

Re: Marlboro Raceway
WRA File #84-WC-0381

Dear Mr. Peck:

For many years, the old Marlboro Raceway (automobile racing) has been abandoned. The buildings have deteriorated and are an eyesore.

It is my understanding that Mr. Atta Moshkelgosha through his engineers, Ben Dyer Associates, Inc., is attempting to develop this property. It is my understanding that Mr. David Murray, of Ben Dyer Associates, has

BEST AVAILA

submitted a plan and stands ready to amend or alter the plan in any way so as to make the development proposal environmentally sound. It is my understanding that the Prince Geroge's County Department of Public Works and Transportation is generally in favor of this project. I would call your attention to the attached letter.

A modern development at this site would certainly be beneficial to the area. The old raceway lies within the boundaries of my Councilmanic District.

I will appreciate your positive efforts in assisting Mr. Moshkelgosha and Ben Dyer Associates in achieving their goals. Thank you for showing interest and for giving any needed assistance to this problem.

Sincerely,

/Original Signed/

William B. Amonett

Councilman, 9th District

BLE COPY

PRINCE GEORGE'S COUNTY
OFFICE OF PERSONNEL

214-78-0449

Benjamin J. Woolery

Circuit Court Law Clerk

11-3-86 to 7-8-88

(3)

FILED

MAR 14 1990

JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1291

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

ATTA MOSHKELGOSHA,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF
MARYLAND

BRIEF IN OPPOSITION

Joyce A. Birkel
Principal Counsel to the
District Council
Office of County Council
County Administration Bldg.
Upper Marlboro, MD 20772
(301) 952-5261

Counsel for Respondent
County Council of Prince
George's County, Sitting
as the District Council

14 pp

QUESTIONS PRESENTED

Petitioner's Petition for Certiorari states the questions presented. (Sup. Ct. R. 34.2)

PARTIES

It should be noted that the caption used by Petitioner in his Petition is incorrect in that the Court of Special Appeals of Maryland inadvertently did not incorporate in their caption both the County Council of Prince George's County, sitting as the District Council, and Prince George's County, Maryland (see Opinion and Order of the Circuit Court, Appendix, p. 25) as appellees, and when Petitioner decided to proceed with his appeal pro se, he was not authorized to enter an appeal on behalf of his former co-appellant.

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TABLE OF AUTHORITIES

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Statutes

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Ordinance, Subtitle 27 of
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No. 89-1291

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

ATTA MOSHKELGOSHA,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINIONS BELOW

Respondent is satisfied with Petitioner's presentation of the opinions below. (Sup. Ct. R. 34.2)

JURISDICTIONAL STATEMENT

Respondent is satisfied with Petitioner's jurisdiction statement. (Sup. Ct. R. 34.2)

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

Respondent is satisfied with Petitioner's statement of the provisions involved. (Sup. Ct. R. 34.2)

STATEMENT OF THE CASE

Petitioner owns a 43.4 acre parcel of land in Prince George's County, Maryland. At the time that Petitioner purchased it in 1981, the entire parcel was in a floodplain, but upon determining that a portion of that parcel could be reclaimed from the floodplain as developable property Petition filed an application for rezoning of 22 acres of the parcel from the O-S (Open Space) Zone to the C-S-C (Commercial Shopping Center) Zone.

In order for the government to permit rezoning of property in Prince George's County, Maryland, there must be a showing of a mistake in the last comprehensive rezoning, or a change in the neighborhood since the last comprehensive rezoning, and that the proposed zoning is the zone that should be placed on the subject property.

Petitioner argued under both theories, but the change in the neighborhood theory has not been vigorously pursued during the proceedings below. Petitioner's mistake theory involves complicated calculations of acreage.

Applications for rezoning, such as Petitioner's, reach their first significant step in the administrative hearing process when they appear before the Zoning Hearing Examiner. The Zoning Hearing Examiner in the matter at hand disagreed with Petitioner's mistake and change in the neighborhood theories, and recommended that the application for rezoning be denied. Because the Zoning Hearing Examiner's recommendation was appealed to the District Council, it did not become a final decision, and thus Petitioner's application came on for hearing before the County

Council of Prince George's County, sitting as the District Council (Respondent).

The District Council concurred with the opinion of the Zoning Hearing Examiner. Petitioner's application for rezoning was, accordingly, denied. Petitioner has brought this matter through the various appellate levels, beginning with the Circuit Court for Prince George's County, which affirmed the District Council, then to the Court of Special Appeals of Maryland, which also affirmed, and then to this Court after a petition for certiorari to the Maryland Court of Appeals was denied.

Argument

The decision below is based upon issues of state law. After passing through the administrative agencies of the government of Prince George's County, Maryland, Petitioner's application reached the first court of law in its appellate journey. The Circuit Court for Prince George's County, Maryland considered Petitioner's arguments and, finding them lacking, affirmed the decision of the District Council of Prince George's County.

From the Circuit Court, Petitioner appealed this matter to the Court of Special Appeals of Maryland, which also affirmed the District Council's decision. The Court of Special Appeals' affirmance of the District Council constituted the second consideration of this matter by a court of

law in Maryland and this second court reached the same conclusion as the first.

Furthermore, the opinions of the Maryland state courts are not perfunctory. Both the Circuit Court for Prince George's County, Maryland and the Court of Special Appeals of Maryland gave full consideration to the issues and decided them correctly.

Finally, the issues raised by Petitioner are not sufficiently important to warrant this Court's attention, particularly in light of the fact that the issues were not even of sufficient importance for the Maryland Court of Appeals to issue a writ of certiorari upon Petitioner's request. The issues raised turn on the particular facts of this case and are of interest only to the parties to it. The only questions raised are those of state law; no federal questions are at issue.

In conclusion, certiorari should be denied.

CONCLUSION

For the reasons set forth above, the Respondent herein submits that a writ of certiorari should not be granted in this case.

Respectfully submitted,

Joyce A. Birkel
Principal Counsel to the
District Council
Office of County Council
County Administration Bldg.
Upper Marlboro, MD 20772
(301) 952-5261

Counsel for Respondent
County Council of Prince
George's County, Sitting
as the District Council

CERTIFICATE OF SERVICE

I hereby certify that this 14th day of March, 1990, three copies each of the foregoing Brief in Opposition were served by mailing them first-class mail, postage prepaid, to Atta Moshkelgosha, 9239 Greenwood Lane, Lanham, MD 20706 and to Michael P. Whalen, Esq., County Attorney, Office of Law, County Administration Building, Fifth Floor, Upper Marlboro, MD 20772.

Joyce A. Birkel
Counsel for Respondent

APPENDIX

Errata Sheet

The following errors should be noted in the Appendix filed by Petitioner:

Page

32 The last paragraph should read:

For the reasons stated above, it is this 18th day of May, 1988, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that the decision of the County Council of Prince George's County, sitting as the District Council in reference to Zoning Map Amendment Application A-9596 is hereby AFFIRMED.

34 The first line should read:

Case No.: A-9596